



The Attorney General of Texas

December 21, 1982

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Mr. M. G. Goode, Engineer-Director
State Department of Highways and
Public Transportation
Highway Building, 11th and Brazos
Austin, Texas 78701

Open Records Decision No. 325

Re: Hearing officer's report
of state employee's termina-
tion

Dear Mr. Goode:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether a hearing officer's report of a state employee's termination is available to the public.

The employee in question was terminated on February 1, 1982, after he and another employee were found to have used a state dump truck to deliver approximately one ton of asphaltic material and five advertising signs to the former's residence. A hearing officer of the Department of Highways and Public Transportation conducted an inquiry into the matter, and, in a report dated March 1, 1982, upheld the termination. His report consists of background information, a summary of interviews, and his conclusions and recommendations. Attached to the report are written statements by various persons who had knowledge of the incident. A union representative has requested copies of all material contained in the investigatory file.

Our letter of acknowledgment to your request letter contained the following statement:

The Open Records Act places on the custodian of records the burden of proving that they are excepted from public disclosure. We are not required by the Act to raise and consider exceptions which you have not raised.


You have not invoked any specific exception under section 3(a) of the Open Records Act. In our opinion, except for section 3(a)(1), which excepts "information deemed confidential by law," this office is not authorized to raise exceptions on behalf of a governmental body. See Open Records Decision No. 321 (1982). Section 3(a)(1) does not appear to except any of the material at issue here. The act clearly provides:

If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act... the governmental body... must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

V.T.C.S. art. 6252-17a, §7(a).

Since you have failed to indicate which exception or exceptions you believe to be applicable here, we must presume, in accordance with section 7(a), that the entire investigative report, with attachments, is public information and must be disclosed to the requestor.

Very truly yours,



MARK WHITE
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